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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648-BG15

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council submitted Amendment 47 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) to NMFS for review. If approved, Amendment 47 would exempt eastern *Chionoecetes bairdi* Tanner (EBT) and western *C. bairdi* Tanner (WBT) crab that is custom processed at a facility through contractual arrangements with the processing facility owners from being applied against the individual processing quota (IPQ) use cap of the processing facility owners. Amendment 47 would modify the Crab FMP to allow all of the EBT and WBT Class A individual fishing quota crab to be processed at the facilities currently processing EBT and WBT crab and would have significant, positive economic effects on the fishermen, processors, and communities that participate in the EBT and WBT fisheries. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Crab FMP, and other applicable laws.

DATES: Submit comments on or before [*insert date 60 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2016-0081, by any one of the following methods.

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0081, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) (collectively referred to as the “Analysis”) and the Categorical Exclusion prepared for Amendment 47 may be obtained from

<http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

The Environmental Impact Statement, RIR, Final Regulatory Flexibility Analysis, and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 47 to the Crab FMP is available for public review and comment.

NMFS manages the king and Tanner crab fisheries in the U.S. exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) under the Crab FMP. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the Crab FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the Crab FMP appear at 50 CFR parts 600 and 680.

The Crab Rationalization Program (Program) was implemented on March 2, 2005 (70 FR 10174). The Program established a limited access privilege program for nine crab fisheries in the BSAI, including the EBT and WBT crab fisheries, and

assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific period. Under the Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch to shoreside crab processors or to stationary floating crab processors; catcher/processor vessel owner QS was assigned to LLP license holders who harvested and processed their catch at sea; captains and crew on board catcher/processor vessels were issued catcher/processor crew QS; and captains and crew on board catcher vessels were issued catcher vessel crew QS. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch, called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the Program. Each year PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. QS derived from deliveries made by catcher vessel owners (i.e., CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a specific processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

When the Council recommended the Program, it expressed concern about the potential for excessive consolidation of QS and PQS, in which too few persons

control all of the QS or PQS and the resulting annual IFQ and IPQ. The Council determined that excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the Program EIS. To address these concerns, the Program limits the amount of QS that a person can hold (i.e., own), the amount of IFQ that a person can use, and the amount of IFQ that can be used on board a vessel. Similarly, the Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a given facility. These limits are commonly referred to as use caps.

In most of the nine BSAI crab fisheries under the Program, including the Tanner crab fisheries, a person is limited to holding no more than 30 percent of the PQS initially issued in the fishery, and to using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery, with a limited exemption for persons receiving more than 30 percent of the initially issued PQS. No person in the EBT or WBT crab fisheries received in excess of 30 percent of the initially issued PQS (see Section 2.5.2 of the Analysis). Therefore, no person may use an amount of EBT or WBT IPQ greater than an amount resulting from 30 percent of the initially issued EBT or WBT PQS. The rationale for the IPQ use caps is described in the Program EIS and the final rule implementing the Program (70 FR 10174, March 2, 2005).

Under § 680.7(a)(7), any IPQ crab that is “custom processed” at a facility an IPQ holder owns will be applied against the IPQ use cap of the facility owner, unless specifically exempted by § 680.42(b)(7). A custom processing arrangement exists

when an IPQ holder has a contract with the owners of a processing facility to have his or her crab processed at that facility, and the IPQ holder does not have an ownership interest in that processing facility or is not otherwise affiliated with the owners of that processing facility. In custom processing arrangements, the IPQ holder contracts with a facility operator to have the IPQ crab processed according to that IPQ holder's specifications.

Shortly after implementation of the Program, the Council submitted and NMFS approved Amendment 27 to the Crab FMP (74 FR 25449, May 28, 2009). Amendment 27 was designed to improve operational efficiencies in crab fisheries with historically low total allowable catches or that occur in more remote regions by exempting certain IPQ crab processed under a custom processing arrangement from applying against the IPQ use cap of the owner of the facility at which IPQ crab are custom processed.

Table 2-5 in Section 2.6.1 of the Analysis shows that during the 2006/2007 crab fishing year, there were six processing facilities owned by five unaffiliated processors receiving EBT Class A IFQ crab and there were five processing facilities owned by four unaffiliated processors receiving WBT Class A IFQ crab. Since then, there has been consolidation in the BSAI crab processing sector, thus reducing the number of processing facilities that are unaffiliated with one another. This consolidation has occurred through the merger of two companies and the recent exit of a company from the fishery. Additionally, PQS has been purchased by entities that do not own or operate processing facilities. As Section 2.6 of the Analysis describes (see **ADDRESSES**), for the first year since the start of the Program, there were only three unique unaffiliated persons (processors) who received EBT and WBT IPQ crab at their facilities during the 2015/2016 crab fishing year. These three processors are

the Maruha-Nichiro Corporation, which includes Alyeska Seafoods, Peter Pan Seafoods, and Westward Seafoods; Trident Seafoods; and Unisea Seafoods.

Information in section 2.6 of the Analysis explains that these three processors also own and operate all of the facilities that processed EBT and WBT IPQ crab during the 2015/2016 crab fishing year.

The Council recognized that consolidation within the Tanner crab processing sector has constrained the ability of the processing sector to process all of the EBT and WBT Class A IFQ crab without exceeding the IPQ use caps. The Council recognized that without additional unique and unaffiliated processing facilities entering the Tanner crab processing sector for the 2016/2017 crab fishing year or beyond, there is a significant risk that the portion of the Tanner crab allocation in excess of the caps would not be processed. Without the ability to have all EBT and WBT Class A IFQ processed, that portion of the Tanner crab allocation in excess of the caps would likely go unharvested because sufficient processing facilities do not exist in the Bering Sea region.

In June 2016, the Council recommended Amendment 47 to the FMP. This proposed action would add EBT and WBT IPQ crab to the list of BSAI crab fisheries receiving a custom processing arrangement exemption under Chapter 11 of the FMP in the *Clarifications and Expressions of Council Intent* section. If approved, Amendment 47 would exempt EBT and WBT IPQ crab that is custom processed at a facility through contractual arrangements with the facility owners from being applied against the IPQ use cap of the facility owners. This action would allow all EBT and WBT IPQ crab received under custom processing arrangements at the facilities owned by the three existing EBT and WBT processors (Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods) to not be counted against the IPQ use cap of the

facility or the facility owners. The custom processing arrangement exemption would allow these processors to custom process crab for unaffiliated IPQ holders who have custom processing arrangements with the processors, thereby allowing harvesters to fully harvest and deliver their EBT and WBT Class A IFQ crab to IPQ holders with a custom processing arrangement at facilities operating in these fisheries.

The anticipated effects of this proposed action include allowing the full processing of all EBT and WBT Class A IFQ crab and the associated economic and social benefits of that processing activity for harvesters, the existing Tanner crab processors, and the communities where processing facilities are located. These communities include Akutan, Dutch Harbor/Unalaska, King Cove, and Saint Paul. The proposed rule would allow all of the Tanner crab Class A IFQ to be harvested and processed by existing processors and thus avoid the adverse economic and social impacts created by the lack of adequate processing capacity that would otherwise result if the EBT and WBT crab fisheries could not be fully processed. Ten percent of the EBT and WBT Class A IFQ crab represents approximately \$3.4 million in ex-vessel value and \$ 4.95 million in first wholesale value based on estimated ex-vessel and first wholesale values of EBT and WBT crab in the 2015/2016 crab fishing year (see Section 2.9 of the Analysis for additional detail).

The Council and NMFS considered whether Amendment 47 could result in further consolidation of Tanner crab processing to fewer facilities than currently operating. Under Amendment 47, there would be no regulatory barriers for processing companies to further consolidate processing facilities for Tanner crab. Since EBT and WBT crab are not subject to regionalization or right of first refusal provisions, there would be no regulatory limitations preventing all of the EBT and WBT IPQ crab from being processed by one company at one facility. However,

further consolidation is not anticipated as a result of this action because the existing processing companies also have substantial holdings of PQS in the EBT and WBT fisheries, and it would be more economical for them to process the PQS they hold to help maintain a consistent amount of crab available for processing at the facility rather than create custom processing arrangements with other companies.

Public comments are solicited on proposed Amendment 47 to the Crab FMP through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 47, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 47 to be considered in the approval/disapproval decision on Amendment 47. All comments received by the end of the comment period on Amendment 47, whether specifically directed to the amendment or the proposed rule will be considered in the amendment approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2016.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

